

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION  
AT PIKESVILLE

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PAINTSVILLE HOSPITAL COMPANY,  
LLC D/B/A PAUL B. HALL  
REGIONAL MEDICAL CENTER,  
Plaintiff,

v.

NATIONAL LABOR RELATIONS BOARD  
and  
PHILIP MISCIMARRA,  
in his official capacity as  
Chairman of the National Labor Relations  
Board,  
Defendants

Civil Action No.  
7:17-cv-00056-KKC

**NLRB’S MOTION TO TRANSFER VENUE  
AND MEMORANDUM IN SUPPORT**

Defendants National Labor Relations Board, *et al.* (jointly referenced as “the NLRB”) hereby move to transfer this case to the United States District Court for the Southern District of West Virginia or, alternatively, to the United States District Court for the District of Tennessee. For the reasons set forth below, the balance of factors considered in transferring venue pursuant to 28 U.S.C. § 1404(a) weighs in favor of this transfer.

## INTRODUCTION

The NLRB acknowledges that “a plaintiff’s choice of forum is generally entitled to considerable weight,” *Gray v. Duval Cty. Pub. Sch.*, No. 3:13-CV-00902-TBR, 2014 WL 4716487, at \*3 (W.D. Ky. Sept. 22, 2014), *citing Nicol v. Kosciński*, 188 F.2d 537 (6th Cir. 1951), and that the “moving party bears the burden of proving by a preponderance of the evidence that transfer is desirable,” *citing Roberts Metal v. Florida Props. Mktg. Grp., Inc.*, 138 F.R.D. 89, 93 (N.D. Ohio 1991), *aff’d* 22 F.3d 1104 (6th Cir. 1994).

Nonetheless, “for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). *See also Abdur-Rahiim v. Doe*, No. CIV. 08-224-ART, 2009 WL 678348, at \*3 (E.D. Ky. Mar. 11, 2009). Indeed, “a court may *sua sponte* transfer a case pursuant to § 1404(a) even though it was filed in the proper venue at the outset.” *Tomlinson v. Holder*, No. 7:11-CV-00140-KSF, 2011 WL 5330724, at \*7 (E.D. Ky. Nov. 7, 2011) *citing Flynn v. Greg Anthony Constr. Co.*, 95 F. App’x 726, 738 (6th Cir.2003) and *Carver v. Knox County, Tenn.*, 887 F.2d 1287, 1291 (6th Cir.1989). Courts also may address the question of venue before determining whether they have subject-matter jurisdiction. *See Pac. Mar. Ass’n v. NLRB*, 905 F. Supp. 2d 55, 58-59 (D.D.C. 2012).

## FACTS

For the most part, the relevant facts for this Motion are contained in the NLRB's Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, filed in this case on this same date. However, two additional facts not otherwise referenced in the NLRB's Opposition are directly relevant to this Motion. First, substantial background matters related to the CHS I complaint regarding Bluefield Hospital, the same hospital that is the subject of the hearing Plaintiff seeks to enjoin, have previously been considered by the United States District Court for the Southern District of West Virginia on a motion for preliminary injunction filed by the NLRB under Section 10(j) of the National Labor Relations Board, 29 U.S. C. § 160(j). *See Henderson v. Bluefield Hospital Company, LLC*, Case No. 16-CV-06305, S.D. W.Va. The District Court denied the NLRB's request for an injunction, Docket No. 20, and the NLRB's appeal of that denial is currently pending before the United States Court of Appeals for the Fourth Circuit, Case No. 16-2331(L). Second, according to a 2016 Security Exchange Commission filing by QHC, it has affiliated hospitals located throughout the United States, including at least three hospitals or clinics in Tennessee. See attached Exhibit 1.

### **ARGUMENT**

Determining the propriety of transfer of venue entails two steps. First, the court must determine whether venue in the transferee district court would be proper. *Abdur-Rahiim v. Doe*, No. CIV. 08-224-ART, 2009 WL 678348, at \*3; *D.C. Micro Development, Inc. v. Lange*, 246 F. Supp. 2d 705, 712–13 (W.D. Ky. 2003). This first requirement is unquestionably met here. Venue is appropriate in a

“judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is subject of the action is situated.” 28 U.S.C. § 1391(b)(2). Plaintiff could have brought this action in the Southern District of West Virginia—where Monday’s trial of the Bluefield Hospital unfair labor practice will be held—or, alternatively, in the Middle District of Tennessee— where the trial pertaining to derivative liability as a successor, joint employer or single employer is scheduled to be held at some future date, as yet to be determined by the administrative judge. Plaintiff’s Complaint involves questions of federal law premised on operative events that arise and will take place within either of these two districts. As such, venue in either district court would be appropriate. *See, e.g. Lab. Corp. of Am. Holdings v. NLRB*, 942 F. Supp. 2d 1, 4, 5 (D.D.C. 2013) (transferring *Leedom* action, because representation proceedings, scheduled union election, employer’s facilities, and employees were all located in New Jersey); *Pacific Maritime Ass’n*, 905 F.Supp.2d 55 at 59-60 (determining that *Leedom* action against NLRB “might have been brought” in Oregon, where unfair labor practice proceeding and other events underlying plaintiff’s claim almost exclusively took place in Oregon); *cf. Tomlinson v. Holder*, No. 7:11-CV-00140-KSF, 2011 WL 5330724, at \*7 (E.D. Ky. Nov. 7, 2011)(transferring action where “alleged acts and omissions . . . did not occur in this district . . .”).

The second step to consider when a party requests a change in venue is whether doing so “would serve the convenience of the parties or the interests of justice.” *Abdur-Rahiim v. Doe*, 2009 WL 678348, at \*3; *D.C. Micro Development, Inc.*

*v. Lange*, 246 F. Supp. 2d at 712–13. To that end, district courts consider a variety of factors, including:

(1) convenience of the parties and the witnesses, (2) accessibility of sources of proof, (3) the costs of securing testimony from witnesses, (4) practical problems associated with trying the case in the least expensive and most expeditious fashion, and (5) the interests of justice. Other factors include (1) the relative congestion in the courts of the two forums, (2) the public's interest in having local controversies adjudicated locally, (3) the relative familiarity of the two courts with the applicable law, (4) the plaintiff's original choice of forum, and (5) whether the parties have agreed to a forum selection clause.

*Gorman Co., LLC v. U.S. E.P.A.*, No. CIV. 6:10-228-GFVT, 2011 WL 749508, at \*2–3 (E.D. Ky. Feb. 24, 2011); *Kentucky Speedway, LLC v. Nat'l Ass'n of Stock Car Auto Racing, Inc.*, 406 F. Supp. 2d 751, 755 (E.D. Ky. 2005). There can be no predetermined outcome; rather the court is tasked “to adjudicate motions for transfer according to an individualized case-by-case consideration of convenience and fairness.” *Kentucky Speedway, supra*, quoting *Stewart Organization v. Ricoh*, 487 U.S. 22, 29 (1988). Here, as explained below, the balance of factors favors transfer due to the connection between the controversy and events unfolding in the Southern District of West Virginia, later moving, among other places, to the Middle District of Tennessee, as compared with a commensurate lack of a connection between the aforementioned events and the Eastern District of Kentucky.

**A. The Northern District of Ohio and the Middle District of Tennessee are more important loci of operative facts in this case.**

The Bluefield Hospital hearing that Plaintiff seeks to enjoin is scheduled to commence in Beaver, West Virginia, on Monday, March 27, 2017. Additional hearings in the CHS II case will continue in California, Ohio, and West Virginia, culminating with a hearing to be held in Nashville, Tennessee, on a date not yet determined. The Nashville hearing is where the evidence of joint and/or single employer status between CHS and/or CHSPSC with the individually named hospitals as well as the evidence regarding the status of QHC or QHCCS as successors to CHS and CHSPSC will be heard by the administrative law judge. It is also the location where the joint/single employer status of CHS and CHSPSC in the CHS I case is scheduled to be heard on August 21 – 31 this summer.

Both the Southern District of West Virginia (where Bluefield Hospital and Beaver, West Virginia are located) and the Middle District of Tennessee (Nashville) have a compelling interest in having local disputes and all related issues “resolved in the locale where they arise.” *Trout Unlimited v. Dep’t of Agric.*, 944 F. Supp. 13, 19 (D.D.C. 1996); *see also Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947) (stating that, “[t]here is a local interest in having localized controversies decided at home”).

Plaintiff contends that that the commencement of the CHS II Bluefield hearing in Beaver, West Virginia threatens to violate its statutory and due process rights. Moreover, the key issues by which they claim to be harmed, the introduction of joint and single employer evidence against CHS/ CHSPSC and successorship status against QHC or QHCCS, will take place at some still undetermined future

date in Nashville. Accordingly, the impact and immediate effects of any decision in this case will be felt in those regions, which strongly militate toward transfer. *Lab. Corp. of Am. Holdings*, 942 F. Supp. at 4 (“because this case is essentially a challenge to a union election that will take place in New Jersey, if at all, there is a strong local interest in having the controversy decided in the District of New Jersey, where the affected employees are located.”). In short, the fact that either the Southern District of West Virginia or the Middle District of Tennessee a locus of operative facts in the case supports transfer to one of those districts. By contrast, the *only* ties that Kentucky has to this case is that *this* particular Plaintiff – is located in the state.

#### **B. The interests of justice favor transfer.**

In weighing whether the “interests of justice” favor transfer, courts consider whether the plaintiff has engaged in forum shopping. *See Turner & Newall, PLC v. Canadian Universal Ins. Co.*, 652 F. Supp. 1308, 1312 (D.D.C. 1987) (Section 1404(a) is designed to prevent forum shopping).

As indicated below, under Plaintiff’s theory of the case, any of the more than 148 affiliates of QHC located across the country<sup>1</sup> could have filed suit in any district court to which it possesses sufficient connections, despite the fact that most of these locations are far removed from the heart of the controversy. In other cases where parties seeking to enjoin NLRB proceedings have chosen venues not located near

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<sup>1</sup> Attached as Exhibit 1 to this Motion is an excerpt of QHC’s, April 1, 2016 10-K filing with the Securities and Exchange Commission, containing a listing of approximately 148 self-reported subsidiaries of QHC.

the locus of the labor dispute, courts have balanced the interests of justice in favor of granting the NLRB's motions for transfer. *See Lab. Corp.*, 942 F. Supp. 2d at 1; *Pac. Mar. Ass'n*, 905 F. Supp. 2d at 59-63.

**C. Plaintiff's choice of forum should be afforded little weight.**

In this case, the facts and claim underlying Plaintiff's Complaint lack a substantial connection, or meaningful ties to, the instant forum. Plaintiff's Complaint concerns complex Board proceedings that initially began in Cleveland (CHS I) and have continued in numerous other locales across the United States. This second course of litigation (CHS II) begins on March 27 in Beaver, West Virginia, and will similarly continue in other locales as it proceeds, including Nashville, Tennessee. But, critically, not one of the hearings takes place in Kentucky. The only connection to the Eastern District of Kentucky is that Plaintiff—one of QHC's hundred plus subsidiaries spread out across the United States—is located there. "Where the forum has little connection with the controversy at hand, the plaintiff's choice is afforded less weight." *Gray v. Duval Cty. Pub. Sch.*, No. 3:13-CV-00902-TBR, 2014 WL 4716487, at \*4 (W.D. Ky. Sept. 22, 2014), citing *Valvoline Instant Oil Change Franchising, Inc. v. RFG Oil, Inc.*, No. 12-CV-39-KSF, 2012 WL 36113300, at \*5 (E.D. Ky. Aug. 22, 2012); accord *EEOC v. Outokumpu Stainless, USA, LLC*, No. 2:15CV405-WHA, 2015 WL 5685240, at \*4 (M.D. Ala. Sept. 25, 2015) (quoting *Gould v. Nat'l Life Ins. Co.*, 990 F.Supp. 1354, 1358 (M.D. Ala. 1998)).



**D. The remaining factors are irrelevant here.**

The issues at the core of the instant dispute are legal in nature, as Plaintiff is seeking injunctive and declarative relief alleging due process violations, and the NLRB asserts that district courts lack jurisdiction to enjoin its proceedings based on Plaintiff's claims. Accordingly, no witness testimony will be required to support the parties legal arguments, and any relevant documentary evidence can be filed on ECF. Thus, the convenience of the witnesses, convenience of the parties, location of relevant documents and the relative ease of access to sources of proof, the relevant means of the parties, as well as the availability of process to compel the attendance of unwilling witnesses are "near neutral" if not downright irrelevant to the transfer analysis in this particular case. *Gorman Co., LLC v. U.S. E.P.A.*, No. CIV. 6:10-228-GFVT, 2011 WL 749508, at \*5 (E.D. Ky. Feb. 24, 2011).

What is determinative here is the connection between the hearings that Plaintiff is attempting to enjoin and the Southern District of West Virginia or the Middle District of Tennessee, as well as the absence of a connection of this case to the present forum. Accordingly, for the foregoing reasons, this Court should transfer

the instant controversy to the either the Southern District of West Virginia or the Middle District of Tennessee.

Respectfully submitted,

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Washington, DC

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# SEC Filings

## 10-12B/A

QUORUM HEALTH CORP filed this Form 10-12B/A on 04/01/2016

Entire Document

**Exhibit 21.1**

### **Quorum Health Corporation**

#### **SUBSIDIARY LISTING**

(\*) Majority position held in an entity with physicians, non-profit entities or both

Alfaro, Ltd. (NV)

Ambulance Services of Forrest City, LLC (AR)

Ambulance Services of Lexington, Inc. (TN)

Ambulance Services of McKenzie, Inc. (TN)

Ambulance Services of Tooele, LLC (DE)

Anna Clinic Corp. (IL)

Anna Hospital Corporation (IL)

d/b/a Union County Hospital

9

Augusta Health System, LLC (DE)

Augusta Hospital, LLC\* (DE)

d/b/a Trinity Hospital of Augusta

Augusta Physician Services, LLC (DE)

Barrow Health Ventures, Inc. (GA)

Barstow Healthcare Management, Inc. (CA)

Barstow Primary Care Clinic (CA)

Big Bend Hospital Corporation (TX)

d/b/a Big Bend Regional Medical Center

Big Spring Hospital Corporation (TX)

d/b/a Scenic Mountain Medical Center

Blue Island Clinic Company, LLC (DE)

Blue Island HBP Medical Group, LLC (DE)

Blue Island Hospital Company, LLC (DE)

d/b/a MetroSouth Medical Center

Blue Island Illinois Holdings, LLC (DE)

Blue Ridge Georgia Holdings, LLC (DE)

Blue Ridge Georgia Hospital Company, LLC\* (DE)

d/b/a Fannin Regional Hospital

Central Alabama Physician Services, Inc. (AL)

Centre Clinic Corp. (AL)

Centre HBP Services, LLC (DE)

Centre Hospital Corporation (AL)

d/b/a Cherokee Medical Center

Centre RHC Corp. (AL)

CHS Utah Holdings, LLC (DE)

Clinton Hospital Corporation (PA)

d/b/a Lock Haven Hospital

Coastal Health Partners (CA)

Cottage Rehabilitation and Sports Medicine, L.L.C. (IL)

Crossroads Physician Corp. (IL)

CSRA Holdings, LLC (DE)

Deming Clinic Corporation (NM)

Deming Hospital Corporation (NM)

d/b/a Mimbres Memorial Hospital

Deming Nursing Home Company, LLC (DE)

DHSC, LLC (DE) d/b/a Affinity Medical Center

Doctors Hospital Physician Services, LLC (DE)

Edwardsville Ambulatory Surgery Center, L.L.C. (IL)

Evanston Clinic Corp. (WY)

Evanston Hospital Corporation (WY)

d/b/a Evanston Regional Hospital

Fannin Regional Orthopaedic Center, Inc. (GA)

Forrest City Arkansas Hospital Company, LLC (AR)

d/b/a Forrest City Medical Center

Forrest City Clinic Company, LLC (AR)

Forrest City Hospital Corporation (AR)

16

Fort Payne Clinic Corp. (AL)

Fort Payne Hospital Corporation (AL)

d/b/a DeKalb Regional Medical Center

Fort Payne RHC Corp. (AL)

Galesburg Hospital Corporation (IL)

d/b/a Galesburg Cottage Hospital

Galesburg Professional Services, LLC (DE)

Gateway Malpractice Assistance Fund, Inc. (IL)

Georgia HMA Physician Management, LLC (GA)

Granite City ASC Investment Company, LLC (DE)

Granite City Clinic Corp (IL)

Granite City HBP Corp (DE)

Granite City Hospital Corporation (IL)

Granite City Illinois Hospital Company, LLC (IL)

d/b/a Gateway Regional Medical Center

Granite City Orthopedic Physicians Company, LLC (IL)

Granite City Physicians Corp. (IL)

Greenville Clinic Corp. (AL)

Greenville Hospital Corporation (AL)

d/b/a L.V. Stabler Memorial Hospital

Hamlet H.M.A., LLC (NC)

d/b/a Sandhills Regional Medical Center

Hamlet HMA Physician Management, LLC (NC)

Hamlet HMA PPM, LLC (NC)

Haven Clinton Medical Associates, LLC (DE)

21

Heartland Rural Healthcare, LLC (IL)

Hidden Valley Medical Center, Inc. (GA)

HMA Foundation, Inc. (FL)

Hospital of Barstow, Inc. (DE)

d/b/a Barstow Community Hospital

Hospital of Louisa, Inc. (KY)

d/b/a Three Rivers Medical Center

In-Home Medical Equipment Supplies and Services, Inc. (IL)

Jackson Hospital Corporation (KY)

d/b/a Kentucky River Medical Center

Jackson Physician Corp. (KY)

Kentucky River HBP, LLC (DE)

Kentucky River Physician Corporation (KY)

King City Physician Company, LLC (DE)

Knox Clinic Corp. (IL)

Lexington Clinic Corp. (TN)

Lexington Family Physicians, LLC (DE)

Lexington Hospital Corporation (TN)

d/b/a Henderson County Community Hospital

Lindenhurst Illinois Hospital Company, LLC (IL)

Lindenhurst Surgery Center, LLC (DE)

Lock Haven Clinic Company, LLC (DE)

Marion Hospital Corporation (IL)

d/b/a Heartland Regional Medical Center

Massillon Community Health System LLC (DE)

Massillon Health System LLC (DE)

21

Massillon Holdings, LLC (DE)

Massillon Physician Services, LLC (DE)

McKenzie Clinic Corp. (TN)

McKenzie Physician Services, LLC (DE)

McKenzie Tennessee Hospital Company, LLC (DE)

d/b/a McKenzie Regional Hospital

McKenzie-Willamette Regional Medical Center Associates, LLC (DE)

d/b/a McKenzie-Willamette Medical Center

Memorial Management, Inc. (IL)

Mesa View Physical Rehabilitation, LLC (NV)

Mesa View PT, LLC (DE)

Mesquite Clinic Management Company, LLC (DE)

MMC of Nevada, LLC (DE)

d/b/a Mesa View Regional Hospital

Monroe County Surgical Center, LLC (IL)

Monroe Diagnostic Testing Centers, LLC (GA)



Monroe HMA Physician Management, LLC (GA)

Monroe HMA, LLC (GA)

d/b/a Clearview Regional Medical Center

MWMC Holdings, LLC (DE)

National Healthcare of Mt. Vernon, Inc. (DE)

d/b/a Crossroads Community Hospital

National Imaging of Cartersville, LLC (DE)

National Imaging of Mount Vernon, LLC (DE)

OHANI, LLC (DE)

Paintsville HMA Physician Management, LLC (KY)

Paintsville Hospital Company, LLC (KY)

d/b/a Paul B. Hall Regional Medical Center

Phillips Clinic Corp. (AR)

Phillips Hospital Corporation (AR)

d/b/a Helena Regional Medical Center

QHC California Holdings, LLC (DE)

QHCCS, LLC (DE)

QHC HIM Shared Services, LLC (DE)

QHG of Massillon, Inc. (OH)

QHR Development, LLC (DE)

20

QHR Healthcare Affiliates, LLC (DE)

QHR Intensive Resources, LLC (DE)

QHR International, LLC (DE)

Quorum Health Corporation (DE)

Quorum Health Investment Company, LLC (DE)

Quorum Health Resources, LLC (DE)

Quorum Purchasing Advantage, LLC (DE)

Quorum Solutions, LLC (DE)

Red Bud Clinic Corp. (IL)

Red Bud Hospital Corporation (IL)

Red Bud Illinois Hospital Company, LLC (IL)

d/b/a Red Bud Regional Hospital

Red Bud Physician Group, LLC (DE)

Red Bud Regional Clinic Company, LLC (DE)

River to River Heart Group, LLC (IL)

San Miguel Clinic Corp. (NM)

San Miguel Hospital Corporation (NM)

d/b/a Alta Vista Regional Hospital

SMMC Medical Group (TX)

Southern Illinois Medical Care Associates, LLC (IL)

Springfield Oregon Holdings, LLC (DE)

21

Sunbury Clinic Company, LLC (DE)

Sunbury Hospital Company, LLC (DE)

d/b/a Sunbury Community Hospital

Three Rivers Medical Clinics, Inc. (KY)

Tooele Clinic Corp. (UT)

Tooele Hospital Corporation (UT)

d/b/a Mountain West Medical Center

Triad of Oregon, LLC (DE)

Watsonville Healthcare Management, LLC (DE)

Watsonville Hospital Corporation (DE)

d/b/a Watsonville Community Hospital

Waukegan Clinic Corp. (IL)

Waukegan Hospital Corporation (IL)

Waukegan Illinois Hospital Company, LLC (IL)

d/b/a Vista Medical Center East; Vista Medical Center West

Western Illinois Kidney Center, LLC (IL)

Williamston Clinic Corp. (NC)

Williamston HBP Services, LLC (DE)

Williamston Hospital Corporation (NC)

d/b/a Martin General Hospital

Winder HMA, LLC (GA)

d/b/a Barrow Regional Medical Center